

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

PAUL J. McNALLY, as he is TRUSTEE,
MASSACHUSETTS LABORERS' HEALTH AND
WELFARE FUND and NEW ENGLAND LABORERS'
TRAINING TRUST FUND; JAMES MERLONI, JR.,
as he is TRUSTEE, MASSACHUSETTS LABORERS'
PENSION FUND and MASSACHUSETTS LEGAL
SERVICES FUND; MARTIN F. WALSH, as he is
TRUSTEE, MASSACHUSETTS LABORERS'
ANNUITY FUND,

Plaintiffs

vs.

J. MICHAEL LANDSCAPING, INC.,
Defendant

and

BARLETTA ENGINEERING CORPORATION;
MODERN CONTINENTAL CONSTRUCTION CO.,
INC.; and PEABODY CONSTRUCTION COMPANY,
INC.,

Reach-and-Apply Defendants

C.A. No. 05-11624 RWZ

NOTICE OF DISMISSAL

Now come the Plaintiffs, Paul J. McNally, as he is Trustee, et al., to notify the Court that the Plaintiffs' claim against Reach-and-Apply Defendant Barletta Engineering Corporation ("Barletta") is dismissed because Barletta does not owe any monies to defendant J. Michael Landscaping, Inc., as evidenced by the Affidavit of Barletta vice president Michael Foley, submitted to the Plaintiffs by Barletta and attached hereto as Exhibit A. This dismissal is made

pursuant to Rule 41(a)(1), Fed.R.Civ.P., as Barletta never answered the Complaint in this matter.

Respectfully submitted,

PAUL J. McNALLY, as he is
TRUSTEE, MASSACHUSETTS
LABORERS' HEALTH AND WELFARE
FUND, et al.,

By their attorneys,

/s/ Gregory A. Geiman
Anne R. Sills, Esquire
BBO #546576
Gregory A. Geiman, Esquire
BBO #655207
Segal, Roitman & Coleman
11 Beacon Street
Suite #500
Boston, MA 02108
(617) 742-0208
ggeiman@segalroitman.com

Dated: June 9, 2006

CERTIFICATE OF SERVICE

This is to certify that a copy of the above Notice of Dismissal has been served by first class mail upon Defendant, J. Michael Landscaping, Inc. by its attorney, Paul Hogan at Hogan & Associates, 63 Chatham Street, Boston, MA 02109 and Reach-and-Apply Defendants, Barletta Engineering Corporation by its attorney, John Bulman at 72 Old Forge Road, Scituate, MA 02066, Modern Continental Construction Co., Inc. at 600 Memorial Drive, Cambridge, MA 02139, and Peabody Construction Company, Inc. at 536 Granite Street, Braintree, MA 02184 this 9th day of June, 2006.

/s/ Gregory A. Geiman
Gregory A. Geiman, Esquire

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 05-11624 RWZ

PAUL J. McNALLY, as he is TRUSTEE,
MASSACHUSETTS LABORERS' HEALTH AND
WELFARE FUND and NEW ENGLAND LABORERS'
TRAINING TRUST FUND; JAMES MERLINO, JR.,
as he is TRUSTEE, MASSACHUSETTS LABORERS'
PENSION FUND and MASSACHUSETTS LEGAL
SERVICES FUND; MARTIN P. WALSH, as he is
TRUSTEE, MASSACHUSETTS LABORERS'
ANNUITY FUND,

Plaintiffs,

v.

J. MICHAEL LANDSCAPING, INC.,
Defendant

and

BARILETTA ENGINEERING CORPORATION;
MODERN CONTINENTAL CONSTRUCTION CO.,
INC.; and PEABODY CONSTRUCTION COMPANY,
INC.,

Reach and Apply Defendants

AFFIDAVIT OF MICHAEL FOLEY

I, Michael Foley, on oath depose and say as follows:

1. I reside at 10 Rodgers Circle, North Reading, Massachusetts.

2. I am Vice President of Barletta Engineering Corporation, ("BEC") which is a

reach and apply defendant in the above-referenced action.

3. Based on my review of the payables of BEC, there are no monies owed to J.
Michael Landscaping, Inc..

Signed under the pains and penalties of perjury this 6 day of June 2006.


Michael Foley